

CIVIL COVER SHEET

JS 44 (Rev. 12/07) (cand rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Douglas Burns

DEFENDANTS

City of Redwood City, et. al.

(b) County of Residence of First Listed Plaintiff San Mateo
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael J. Haddad and Julia Sherwin
HADDAD & SHERWIN
505 Seventeenth Street
Oakland, CA 94612; Tel: (510) 452-5500

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus — Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. §§ 1983 and 1988; U.S. Const. Ams. 1, 4, and 14.

Brief description of cause:

Defendant officer's use of excessive force violated rights and caused injury.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
 UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/17/08

M. J. Haddad

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Attorneys for Plaintiff
Douglas Burns

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS BURNS, Individually,

Plaintiff,

vs.

Case No.

C08-02995

CITY OF REDWOOD CITY, a public
entity, REDWOOD CITY POLICE
DEPARTMENT, POLICE OFFICER
JAIME MATEO, POLICE OFFICER
DAVID GOUGH, POLICE OFFICER
RAMIRO PEREZ, POLICE OFFICER
STEPHEN SYSUM, POLICE
OFFICER RICH HARRINGTON,
individually, and DOES 1-10,

Defendants.

COMPLAINT FOR DAMAGES
AND JURY DEMAND

Plaintiff, by and through his attorneys, HADDAD & SHERWIN and LAW OFFICES
OF DONALD L. GALINE, for his Complaint against Defendants, states as follows:

GO 44 SEC. W
NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE SENT

Filed

FILED

JUN 17 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

EDL

JURISDICTION

1
2 1. This is a civil rights action arising from Defendants' unreasonable seizure
3 and use of excessive force against Plaintiff DOUGLAS BURNS ("BURNS"), on or about
4 April 1, 2007, in the City of Redwood City, County of San Mateo, California. This action
5 is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth and Fourteenth
6 Amendments to the United States Constitution. Jurisdiction is founded upon 28 USC §§
7 1331 and 1343(a)(3) and (4), and the aforementioned statutory and constitutional
8 provisions. The amount in controversy herein, excluding interest and costs, exceeds the
9 minimum jurisdictional limit of this Court. Plaintiff further invokes the supplemental
10 jurisdiction of this Court pursuant to 28 USC §1367 to hear and decide claims arising
11 under state law.
12

INTRADISTRICT ASSIGNMENT

13
14 2. A substantial part of the events and/or omissions complained of herein
15 occurred in San Mateo County, California, and this action is properly assigned to the San
16 Francisco Division of the United States District Court for the Northern District of
17 California.
18

PARTIES AND PROCEDURE

19
20 3. Plaintiff DOUGLAS BURNS is a resident of the STATE OF CALIFORNIA.

21 4. Defendant CITY OF REDWOOD CITY is a public entity established and
22 maintained by the laws and Constitution of the State of California, and owns, operates,
23 manages, directs, and controls the Redwood City Police Department ("RCPD"), and
24 employs and/or is responsible for other defendants in this action.
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1 5. Defendant RCPD is, and at all times herein mentioned was, a municipal
2 entity in the County of San Mateo in the State of California, and is wholly owned and
3 operated by Defendant CITY OF REDWOOD CITY.

4 6. Defendant POLICE OFFICER JAIME MATEO, ("MATEO") at all material
5 times was employed as a police officer by Defendants CITY OF REDWOOD CITY and
6 RCPD, and was acting within the course and scope of that employment.

7 7. Defendant POLICE OFFICER DAVID GOUGH, ("GOUGH") at all material
8 times was employed as a police officer by Defendants CITY OF REDWOOD CITY and
9 RCPD, and was acting within the course and scope of that employment.

10 8. Defendant POLICE OFFICER RAMIRO PEREZ, ("PEREZ") at all material
11 times was employed as a police officer by Defendants CITY OF REDWOOD CITY and
12 RCPD, and was acting within the course and scope of that employment.

13 9. Defendant POLICE OFFICER STEPHEN SYSUM ("SYSUM") at all material
14 times was employed as a police officer by Defendants CITY OF REDWOOD CITY and
15 RCPD, and was acting within the course and scope of that employment.

16 10. Defendant POLICE OFFICER RICH HARRINGTON ("HARRINGTON") at
17 all material times was employed as a police officer by Defendants CITY OF REDWOOD
18 CITY and RCPD, and was acting within the course and scope of that employment.

19 11. The true names and capacities of Defendants sued herein as DOES 1-10
20 ("DOE defendants") are unknown to Plaintiff, who therefore sues said Defendants by
21 such fictitious names, and Plaintiff will seek leave to amend this complaint to show their
22 true names and capacities when the same are ascertained. Each DOE defendant was
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1 an employee/agent of the CITY OF REDWOOD CITY and the RCPD, and at all material
2 times acted within the course and scope of that relationship.

3 12. Plaintiff is informed and believes and thereon alleges that each of the
4 Defendants sued herein was negligently, wrongfully, and otherwise responsible in some
5 manner for the events and happenings as hereinafter described, and proximately caused
6 injuries and damages to Plaintiff. Further, one or more DOE defendants was at all
7 material times responsible for the hiring, training, supervision, and discipline of
8 Defendants and other DOE Defendants.

9
10 13. Plaintiff is informed and believes, and thereon alleges, that each of the
11 Defendants was at all material times an agent, servant, employee, partner, joint venturer,
12 co-conspirator, and/or alter ego of the remaining Defendants, and in doing the things
13 herein alleged, was acting within the course and scope of that relationship. Plaintiff is
14 further informed and believes, and thereon alleges, that each of the Defendants herein
15 gave consent, aid, and assistance to each of the remaining Defendants, and ratified
16 and/or authorized the acts or omissions of each Defendant as alleged herein, except as
17 may be hereinafter otherwise specifically alleged.

18
19 14. At all material times, each Defendant was jointly engaged in tortious
20 activity, resulting in the deprivation of Plaintiff's constitutional rights and other harm.

21 15. At all material times, each Defendant acted under color of the laws,
22 statutes, ordinances, and regulations of the CITY OF REDWOOD CITY and RCPD.

23
24 16. The acts and omissions of Defendants MATEO, GOUGH, PEREZ, SYSUM,
25 HARRINGTON and DOES 1-10 as set forth herein at all material times were pursuant to
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1 the actual customs, policies, practices and procedures of the CITY OF REDWOOD CITY
2 and RCPD.

3 17. This complaint may be pled in the alternative pursuant to FRCivP 8(e)(2).

4 **GENERAL ALLEGATIONS**

5 18. Plaintiff realleges each and every paragraph in this complaint as if fully set
6 forth here.

7 19. On or about April 1, 2007, in the City of Redwood City, County of San
8 Mateo, California, in the evening, Plaintiff BURNS, a diabetic, was at the Century 20
9 Theater. At that time, Plaintiff BURNS began to experience very low blood sugar levels
10 and walked towards the theater snack bar to purchase a candy bar to stabilize his blood
11 sugar and prevent insulin shock.
12

13 20. Mr. BURNS is informed and believes that Mikhail Burlyga, the theater
14 security guard, saw the disoriented Plaintiff, misunderstood the nature of Plaintiff's
15 condition, and escorted Plaintiff away from the snack bar and out of the theater. The
16 security guard then called 911 and requested that the police investigate.
17

18 21. Mr. BURNS is informed and believes that outside of the theater, plaintiff
19 went into a potentially life-threatening episode of insulin shock. His physical faculties
20 deteriorated and he became increasingly non-responsive and dazed.

21 22. Mr. BURNS is informed and believes that defendant police officers
22 MATEO and GOUGH, arrived at the theater and confronted Plaintiff, who did not
23 respond. When Plaintiff attempted to re-enter the theater, Defendant MATEO pepper-
24 sprayed Plaintiff in the face and then Defendants MATEO and GOUGH forcibly threw
25 Plaintiff to the ground. At that time, Plaintiff BURNS obviously was an emotionally
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1 disturbed person as well as a disabled person with diabetes, requiring medical care for
2 his insulin shock and special police procedures and tactics. Defendants MATEO and
3 GOUGH failed to use appropriate procedures and tactics in their interaction with Mr.
4 BURNS, ultimately arresting Plaintiff, using excessive and unnecessary force against
5 Plaintiff causing great bodily injury to Plaintiff, and calling for backup.

6 23. Mr. BURNS is informed and believes that while Plaintiff was on the ground,
7 Defendants forced Plaintiff's forehead into the concrete. Defendants Gough and Mateo,
8 and each of them, struck Plaintiff in the left rib cage area several times with a baton, and
9 forcefully pinned Plaintiff's right arm with nunchucks.
10

11 24. When Defendant PEREZ arrived on the scene, Defendants MATEO and
12 GOUGH continued to strike and restrain Plaintiff. Defendant PEREZ assisted,
13 participated, and/or failed to intervene to protect Plaintiff from excessive force by fellow
14 officers. Defendant PEREZ failed to use appropriate procedures and tactics in his
15 interaction with Mr. BURNS, ultimately using excessive and unnecessary force against
16 Plaintiff in his assistance of Defendants MATEO and GOUGH, causing great bodily injury
17 to Plaintiff.
18

19 25. Mr. BURNS is informed and believes that additional backup RCPD officers,
20 Defendants SYSUM and HARRINGTON and DOES 1-10 arrived and, together with
21 Defendants MATEO, GOUGH, and PEREZ, continued to strike and restrain Plaintiff.
22 Defendant SYSUM also forcibly held Plaintiff's legs. Defendants, and each of them, also
23 used control holds and other physical tactics constituting excessive force under the
24 circumstances that on information and belief caused injury to Plaintiff. At all material
25 times, Plaintiff's status as a disabled, diabetic, and emotionally disturbed person,
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1 requiring medical care for diabetic shock and special police procedures and tactics,
2 remained obvious and apparent to all defendants.

3 26. Mr. BURNS is informed and believes that Defendants, and each of them,
4 handcuffed him, placed him under arrest, and put Plaintiff in a patrol car. Defendants then
5 summoned the fire department and paramedics to flush the pepper spray from Plaintiff's
6 eyes.

7 27. Mr. BURNS is informed and believes that Defendant GOUGH questioned
8 Plaintiff and recorded the questioning on a voice recorder. Despite being dazed from
9 diabetic shock and from Defendants' severe beating, Mr. BURNS told Defendant
10 GOUGH during questioning that he, the Plaintiff, was a diabetic.

12 28. At all times during Mr. BURNS' contact with Defendants, Plaintiff was
13 wearing a highly visible "MedicAlert" bracelet indicating that the Plaintiff suffered from
14 Type I diabetes. At all times during Plaintiff's contact with Defendants, Plaintiff was a
15 disabled diabetic and emotionally disturbed person who required medical care for
16 potentially life-threatening diabetic shock. Plaintiff never displayed any weapon or posed
17 a substantial threat to anyone in any way. The behavior and symptoms Plaintiff exhibited
18 during the incident were those typical of an individual suffering from diabetic insulin
19 shock.

21 29. Mr. BURNS is informed and believes that when the paramedics arrived,
22 they treated Plaintiff for lacerations to the nose and forehead that Defendants, through
23 their use of unnecessary and excessive force, caused. After learning Plaintiff was
24 diabetic, paramedics performed a simple blood test that revealed that Plaintiff's blood
25 sugar level was only 26 mg/dL. A blood sugar level under 40mg/dL is considered a
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1 serious health threat and can lead to permanent brain damage, coma, or even death if
2 left untreated. The paramedics treated Plaintiff on scene by administering a glucose
3 infusion and transported him to the hospital for treatment of insulin shock.

4 30. Despite knowing Plaintiff's medical condition, the Defendants caused
5 Plaintiff to be charged with assaulting a police officer (Cal. Penal Code 243(b)) and
6 resisting arrest (Cal. Penal Code 148). Mr. BURNS was required to retain criminal
7 counsel and face those charges in court when he was arraigned on May 2, 2007.
8 Prosecutors later dismissed the charges against Plaintiff on May 30, 2007 for lack of
9 evidence.
10

11 31. The force used by Defendants against Plaintiff was unjustified and
12 objectively unreasonable under the circumstances.

13 32. Defendants' seizure of Plaintiff was done without probable cause,
14 reasonable suspicion, or other legal right, lasted an excessive amount of time, and was
15 conducted unreasonably.
16

17 33. Alternatively, or concurrently, Defendants' own excessive and unreasonable
18 actions created the situation in which Defendants decided to use force against Plaintiff,
19 and caused an escalation of events leading to their use of force against and injury to
20 Plaintiff BURNS.

21 34. Defendants' unreasonable seizure and use of excessive force against
22 Plaintiff was done at least in part because of Plaintiff's disability (diabetes) and status as
23 an emotionally disturbed person.
24

25 35. At all material times, and alternatively, the actions and omissions of each
26 defendant were intentional, wanton and/or willful, conscience shocking, reckless,
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1 malicious, deliberately indifferent to Plaintiff's rights, done with actual malice, grossly
2 negligent, negligent, and objectively unreasonable.

3 36. Since that day, Plaintiff has required continuing medical treatment for his
4 injuries caused by Defendants. Plaintiff has incurred substantial medical bills.

5 37. As a direct and proximate result of each Defendant's acts and/or omissions
6 as set forth above, Plaintiff sustained the following injuries and damages, past and future,
7 among others:

- 8 a. Severe physical injuries requiring medical treatment, including but
9 not limited to lacerations to his face, injuries to his rib cage, right
10 shoulder, neck and both hands, and exacerbation of his underlying
11 diabetic condition, and injury to his nervous system;
- 12 b. Wrongful seizure and imprisonment;
- 13 c. Failure to accommodate his diabetic disability and discrimination;
- 14 d. Pain and suffering, including emotional distress;
- 15 e. Medical expenses;
- 16 f. Violation of constitutional rights;
- 17 g. Lost Earnings;
- 18 h. Economic losses from arrest and prosecution including attorney's
19 fees and costs;
- 20 i. Harm to Reputation;
- 21 j. All damages and penalties recoverable under 42 USC §§ 1983 and
22 1988, and as otherwise allowed under California and United States
23 statutes, codes, and common law.

24 38. Plaintiff filed a timely claim with Defendant CITY OF REDWOOD CITY
25 pursuant to California Government Code § 910 et seq. on July 25, 2007. Defendant
26 CITY OF REDWOOD CITY rejected that claim on August 30, 2007.
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COUNT ONE
-- 42 USC §1983 --
DEFENDANTS MATEO, GOUGH, PEREZ, SYSUM, HARRINGTON AND DOES 1-10

39. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

40. By the actions and omissions described above, Defendants MATEO, GOUGH, PEREZ, SYSUM, HARRINGTON and DOES 1-10 violated 42 USC §1983, depriving Plaintiff of the following clearly-established and well-settled constitutional rights protected by the Fourth and Fourteenth Amendments to U.S. Constitution:

- a. The right to be free from unreasonable searches and seizures as secured by the Fourth and Fourteenth Amendments;
- b. The right to be free from excessive and unreasonable force in the course of arrest or detention as secured by the Fourth and Fourteenth Amendments.
- c. The right to be free from malicious prosecution as secured by the Fourth and Fourteenth Amendments.

41. As a direct and proximate result of Defendants' acts and/or omissions as set forth above, Plaintiff sustained injuries and damages as set forth at paragraph 37, above.

42. Defendants subjected Plaintiff to their wrongful conduct, depriving Plaintiff of rights described herein, knowingly, maliciously, and with conscious and reckless disregard for whether the rights and safety of Plaintiff and others would be violated by their acts and/or omissions.

1 43. The conduct of Defendants MATEO, GOUGH, PEREZ, SYSUM,
2 HARRINGTON and DOES 1-10 entitles Plaintiff to punitive damages and penalties
3 allowable under 42 USC §1983 and California law.

4 44. Plaintiff is also entitled to reasonable costs and attorney fees under 42 USC
5 §1988 and applicable California codes and law.

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8 **COUNT TWO**
9 **- 42 USC §1983 – Supervisory and Municipal Liability**
10 **DEFENDANTS CITY OF REDWOOD CITY, REDWOOD CITY POLICE DEPARTMENT**
11 **AND DOES 1-10**

12 45. Plaintiff realleges each and every paragraph in this complaint as if fully set
13 forth here.

14 46. On information and belief, the unconstitutional actions and/or omissions of
15 Defendants MATEO, GOUGH, PEREZ, SYSUM, HARRINGTON and DOES 1-10, as well
16 as other officers employed by or acting on behalf of Defendants CITY OF REDWOOD
17 CITY and RCPD, were pursuant to the following customs, policies, practices, and/or
18 procedures of the RCPD, stated in the alternative, which were directed, encouraged,
19 allowed, and/or ratified by policy making officers for the CITY OF REDWOOD CITY and
20 the RCPD:

- 21 a. To use or tolerate the use of excessive and/or unjustified force,
22 including in the use of batons, defensive tactics, and application of
23 control holds during the seizure of a person;
24 b. To engage in or tolerate unreasonable seizures;
25 c. To fail to use appropriate and generally accepted law enforcement
26 procedures in handling emotionally disturbed persons and persons in
27 diabetic emergencies;
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- d. To fail to institute, require, and enforce proper and adequate training, supervision, policies, and procedures concerning handling emotionally disturbed persons and persons having diabetic emergencies;
- e. To cover-up violations of constitutional rights by any or all of the following:
 - i. by failing to properly investigate and/or evaluate complaints or incidents of unlawful seizures, excessive force, and/or handling of emotionally disturbed persons and persons having diabetic emergencies;
 - ii. by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity; and
 - iii. by allowing, tolerating, and/or encouraging police officers to: fail to file complete and accurate police reports; file false police reports; make false statements; intimidate, bias and/or "coach" witnesses to give false information and/or to attempt to bolster officers' stories; and/or obstruct or interfere with investigations of unconstitutional or unlawful police conduct, by withholding and/or concealing material information;
- f. To allow, tolerate, and/or encourage a "code of silence" among law enforcement officers and police department personnel, whereby an officer or member of the department does not provide adverse information against a fellow officer or member of the department or hold another member accountable for official misconduct; and,
- g. To use or tolerate inadequate, deficient, and improper procedures for handling, investigating, and reviewing complaints of officer misconduct, including claims made under California Government Code § 910 et seq.

47. Defendants CITY OF REDWOOD CITY, RCPD, and DOES 1-10 failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants MATEO, GOUGH, PEREZ, SYSUM, HARRINGTON and DOES 1-10, and other law enforcement personnel, with deliberate indifference to Plaintiff's Constitutional rights, which were thereby violated as described above.

1 48. The unconstitutional actions and/or omissions of Defendants MATEO,
2 GOUGH, PEREZ, SYSUM, HARRINGTON and DOES 1-10, and other law enforcement
3 personnel, as described above, were approved, tolerated and/or ratified policy making
4 officers for the RCPD. Plaintiff is informed and believes, and thereupon alleges, the
5 details of this incident have been revealed to the authorized policy makers within the
6 CITY OF REDWOOD CITY and the RCPD, and that such policy makers have direct
7 knowledge of the facts of this incident. Notwithstanding this knowledge, the authorized
8 policy makers within the CITY OF REDWOOD CITY and the RCPD have approved of the
9 conduct of Defendants MATEO, GOUGH, PEREZ, SYSUM, HARRINGTON and DOES
10 1-10, and other Police Department personnel, and have made a deliberate choice to
11 endorse the decisions of those defendant officers and the basis for those decisions. By
12 so doing, the authorized policy makers within the CITY OF REDWOOD CITY and the
13 RCPD have shown affirmative agreement with the individual defendant officers' actions,
14 and have ratified the unconstitutional acts of the individual defendant officers.
15

16 49. The aforementioned customs, policies, practices, and procedures, the
17 failures to properly and adequately hire, train, instruct, monitor, supervise, evaluate,
18 investigate, and discipline, as well as the unconstitutional orders, approvals, ratification
19 and toleration of wrongful conduct by Defendants CITY OF REDWOOD CITY, RCPD,
20 and DOES 1-10, were a moving force and/or a proximate cause of the deprivations of
21 Plaintiff's clearly-established and well-settled constitutional rights in violation of 42 USC
22 §1983, as more fully set forth in Paragraph 40, above.
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24 50. Defendants subjected Plaintiff to their wrongful conduct, depriving Plaintiff
25 of rights described herein, knowingly, maliciously, and with conscious and reckless
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1 disregard for whether the rights and safety of Plaintiff and others would be violated by
2 their acts and/or omissions.

3 51. As a direct and proximate result of the unconstitutional actions, omissions,
4 customs, policies, practices and procedures of Defendants CITY OF REDWOOD CITY,
5 RCPD, and DOES 1-10, as described above, Plaintiff sustained serious injury and is
6 entitled to damages, penalties, costs and attorney fees as set forth in paragraphs 40-44,
7 above, and punitive damages against DOES 1-10 in their individual capacities.

9
10 **COUNT THREE**
-- VIOLATION OF CIVIL CODE §52.1 --
ALL DEFENDANTS

11 52. Plaintiff realleges each and every paragraph in this complaint as if fully set
12 forth here.

13
14 53. By their acts, omissions, customs, and policies, each Defendant acting in
15 concert/conspiracy, as described above, violated Plaintiff's rights under California Civil
16 Code §52.1, and the following clearly-established rights under the United States
17 Constitution and the California Constitution:

- 18 a. The right to be free from unreasonable searches and seizures as
19 secured by the Fourth and Fourteenth Amendments;
- 20 b. The right to be free from excessive and unreasonable force in the
21 course of arrest or detention as secured by the Fourth and Fourteenth
22 Amendments;
- 23 c. The right to be free from malicious prosecution as secured by the Fourth
24 and Fourteenth Amendments;
- 25 d. The right to enjoy and defend life and liberty, acquire, possess and
26 protect property, and pursue and obtain safety, happiness and privacy,
27 as secured by the California Constitution, Article 1, Section 1;

- e. The right to be free from unlawful and unreasonable seizure of one's person as secured by the California Constitution, Article 1, Section 13;
- f. The right to be free from unreasonable or excessive force, as secured by the California Constitution, Article 1, Section 13;
- g. The right to protection from bodily restraint, harm, or personal insult, as secured by Civil Code § 43.

54. As a direct and proximate result of Defendants' violation of California Civil Code §52.1 and of Plaintiff's rights under the United States and California Constitutions and statutes, Plaintiff sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 41-44, and all damages allowed by California Civil Code §§52, 52.1, and California law, not limited to costs, attorneys fees, treble damages, and civil penalties.

COUNT FOUR
-- VIOLATION OF CALIFORNIA CIVIL CODE §51.7 --
ALL DEFENDANTS

55. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

56. By their acts, omissions, customs, and policies, each Defendant acting in concert/conspiracy, as described above, violated Plaintiff's rights secured by California Civil Code §51.7 to be free from any violence, or intimidation by threat of violence, committed against his person or property because of his physical disability.

57. As a direct and proximate result of Defendants' violation of California Civil Code §51.7, Plaintiff sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 41-44, and all damages allowed by California Civil Code §§52, 51.7, and California law, not limited to attorney fees, costs, treble damages, and civil penalties.

COUNT FIVE

-- NEGLIGENCE; PERSONAL INJURIES --
ALL DEFENDANTS

58. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

59. At all times, each Defendant owed Plaintiff the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

60. At all times, each Defendant owed Plaintiff the duty to act with reasonable care.

61. These general duties of reasonable care and due care owed to Plaintiff by all Defendants include but are not limited to the following specific obligations:

- a. to refrain from using excessive and/or unreasonable force against Plaintiff;
- b. to refrain from wrongfully arresting and/or detaining Plaintiff;
- c. to use generally accepted police procedures and tactics that are reasonable and appropriate for Plaintiff's status as an emotionally disturbed person;
- d. to use generally accepted police procedures and tactics that are reasonable and appropriate in assessing Plaintiff's status as a person in a diabetic emergency;
- e. to refrain from abusing their authority granted them by law;
- f. to refrain from violating Plaintiff's rights guaranteed by the United States and California Constitutions, as set forth above, and as otherwise protected by law.

62. Additionally, these general duties of reasonable care and due care owed to Plaintiffs by Defendants CITY OF REDWOOD CITY, RCPD, and DOES 1-10, include but are not limited to the following specific obligations:

- a. to properly and adequately hire, investigate, train, supervise, monitor and discipline their employees, agents, and/or SJPD officers to

1 ensure that those employees/agents/officers act at all times in the
2 public interest and in conformance with law;

3 b. to make, enforce, and at all times act in conformance with policies
4 and customs that are lawful and protective of individual rights,
5 including Plaintiff's;

6 c. to refrain from making, enforcing, and/or tolerating the wrongful
7 policies and customs set forth at paragraph 46, above.

8 63. Defendants, through their acts and omissions, breached each and every
9 one of the aforementioned duties owed to Plaintiff.

10 64. As a direct and proximate result of Defendants' negligence, Plaintiff
11 sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 41-44.

12 **COUNT SIX**
13 **-- ASSAULT AND BATTERY --**
14 **ALL DEFENDANTS**

15 65. Plaintiff realleges each and every paragraph in this complaint as if fully set
16 forth here.

17 66. The actions and omissions of Defendants as set forth above constitute
18 assault and battery.

19 67. As a direct and proximate result of Defendants' assault and battery of
20 Plaintiff, Plaintiff sustained injuries and damages, and is entitled to relief as set forth
21 above at ¶¶ 41-44.

22 **COUNT SEVEN**
23 **-- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS --**
24 **ALL DEFENDANTS**

25 68. Plaintiff realleges each and every paragraph in this complaint as if fully set
26 forth here.

69. In addition to Plaintiff's medical and physical distress, Plaintiff has suffered severe emotional distress proximately caused by the Defendants' extreme and outrageous conduct, as set forth above. Defendants engaged in the aforementioned conduct with a wanton and reckless disregard of the prospect of causing Plaintiff emotional distress and with knowledge that Plaintiff's severe emotional distress would increase as a result.

70. As a direct and proximate result of Defendants' intentional infliction of emotional distress on the Plaintiff, Plaintiff sustained injuries and damages, and is entitled to relief as set forth above at ¶¶ 41-44.

COUNT EIGHT
-- FALSE ARREST AND IMPRISONMENT --
ALL DEFENDANTS

71. Plaintiff realleges each and every paragraph in this complaint as if fully set forth here.

72. At no time during the events described above, and at all other pertinent times, did Defendants have a warrant for the arrest of Plaintiff, nor did Defendants have any facts or information that constituted probable cause that Plaintiff had committed or was about to commit a crime.

73. Defendants, and each of them, intentionally and unlawfully exercised force to restrain, detain, and confine Plaintiff, putting restraint on Plaintiff freedom of movement, and compelled Plaintiff to remain and/or move against his will. Defendants authorized, directed, and assisted in procuring, without process, Plaintiff's unlawful arrest.

74. As a direct and proximate result of Defendants' acts and/or omissions as set forth above, Plaintiff sustained injuries and damages and is entitled to relief as set forth at ¶¶ 41-44 above.

WHEREFORE, Plaintiff respectfully requests the following relief against each and every Defendant herein, jointly and severally:

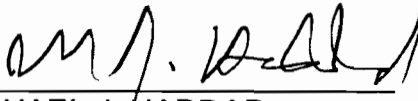
- a. compensatory and exemplary damages in an amount according to proof and which is fair, just and reasonable;
- b. punitive damages under 42 USC §1983 and California law in an amount according to proof and which is fair, just, and reasonable;
- c. all other damages, penalties, costs, interest, and attorney fees as allowed by 42 USC §§ 1983 and 1988, Cal. Civil Code §§ 52 et seq., 52.1, 51.7, Cal. Code of Civ. Proc. 1021.5, and as otherwise may be allowed by California and/or federal law;
- d. Injunctive relief, including but not limited to the following:
 - i. an order prohibiting Defendants and their police officers from unlawfully interfering with the rights of Plaintiff and others to be free from unreasonable searches and seizures and excessive and unreasonable force;
 - ii. an order requiring Defendants to institute and enforce appropriate and lawful policies and procedures for handling emotionally disturbed persons and persons having diabetic emergencies, including in the seizure and use of force against such persons;
 - iii. an order prohibiting Defendants and their police officers from engaging in the "code of silence" as may be supported by the evidence in this case;
 - iv. an order requiring Defendants to train all RCPD Officers concerning generally accepted and proper tactics and procedures for handling

emotionally disturbed persons and persons having
diabetic emergencies and this Court's orders
concerning the issues raised in injunctive relief
requests i-iii, above;

- e. such other and further relief as presented by the evidence in this
case and as this Court may deem appropriate.

DATED: June 17, 2008

HADDAD & SHERWIN

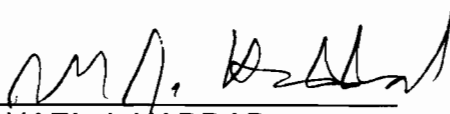
/s/ 
MICHAEL J. HADDAD
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby requests a trial by jury.

DATED: June 17, 2008

HADDAD & SHERWIN

/s/ 
MICHAEL J. HADDAD
Attorneys for Plaintiff